

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 11, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP1081

Cir. Ct. No. 2016CV25

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

PETITIONER,

PETITIONER-RESPONDENT,

V.

DENNIS L. SHAW,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Price County:
DOUGLAS T. FOX, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Dennis Shaw challenges the sufficiency of the evidence supporting an order granting a domestic abuse injunction. We affirm.

¶2 The petitioner sought a domestic abuse injunction against Dennis, as a person related by blood to the petitioner, under WIS. STAT. § 813.12 (2015-16).¹ At the evidentiary hearing, the petitioner testified that Dennis had telephoned him and left a message stating: “Did you pick up the scaffolding from my property today? Heed my message. Thank you for breaking up my family, you son of a bitch. I will find you, and you won’t be happy about it.”²

¶3 Approximately one-half hour later, the petitioner called Dennis back to ask him why he was so upset, and Dennis responded: “You better be packing a gun, you son of a bitch, because I’m going to be packing and I’ll be looking for you.” The petitioner testified the last thing Dennis said during the second phone conversation was that Dennis would find him and “beat me like a drum.” The petitioner also testified that during the prior year, Dennis told him in the presence of several other individuals that if anyone messed with him or tried to take his guns or his family “he would shoot to kill.” The petitioner further stated that Dennis “has a history of threatening other family members It’s been [an]

¹ References to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² The petitioner also testified that he had relayed to the court the specific nature of the words and threats “without being vulgar about it” When asked whether the words were different “if you were asked to be vulgar,” the petitioner testified that Dennis had said to him during the second telephone conversation, “Thanks for breaking up my family, you mother fucking prick.”

ongoing, historical battle that doesn't seem to stop." The petitioner testified that he was fearful of Dennis even as he sat in the courtroom.

¶4 The circuit court granted the injunction. The court focused on the overt threat to "beat him like a drum," as well as the statement that the petitioner should be packing a gun because Dennis would be packing a gun, "clearly implying that Dennis was threatening to shoot him." The court stated Dennis

was upset. He wasn't joking or being lighthearted when he made those statements; he was upset. He was apparently angry at [the petitioner] and in that context was making these threats about beating him and impliedly shooting him, and I should think those are true threats that are intended to leave the listener with the impression that the speaker is not kidding around. So I do think that there is an ample basis for the issuance of an injunction.

¶5 WISCONSIN STAT. § 813.12(4)(a)3. authorizes the issuance of an injunction if the circuit court "finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct ... may engage in, domestic abuse of the petitioner." Domestic abuse includes "[i]ntentional infliction of physical pain, physical injury or illness" or "[a] threat to engage in [such] conduct." WIS. STAT. §§ 813.12(1)(am)1., 6. "Reasonable grounds" is defined as "more likely than not that a specific event has occurred or will occur." WIS. STAT. § 813.12(1)(cg). A decision to grant or deny an injunction is within the circuit court's discretion and should be reversed only upon an erroneous exercise of that discretion. *Sunnyside Feed Co. v. City of Portage*, 222 Wis. 2d 461, 471, 588 N.W.2d 278 (Ct. App. 1998).

¶6 The circuit court properly recognized that a threat in this context must be a "true threat." See *Wittig v. Hoffart*, 2005 WI App 198, ¶16, 287

Wis. 2d 353, 704 N.W.2d 415. As stated in *State v. Perkins*, 2001 WI 46, ¶29, 243 Wis. 2d 141, 626 N.W.2d 762:

A true threat is determined using an objective reasonable person standard. A true threat is a statement that a speaker would reasonably foresee that a listener would reasonably interpret as a serious expression of a purpose to inflict harm, as distinguished from hyperbole, jest, innocuous talk, expressions of political views, or other similarly protected speech. It is not necessary that the speaker have the ability to carry out the threat.

(Footnote omitted.)

¶7 Dennis contends the circuit court’s finding that he made a “true threat” against the petitioner is unsupported by sufficient evidence because it was “innocuous talk, uttered in the heat of the moment.” However, the court specifically found Dennis was not “joking or being lighthearted when he made those statements; he was upset.” The court’s findings were based on the petitioner’s credible testimony concerning Dennis’s direct and overt threat to beat him, and Dennis’s implied threat to shoot him. Although Dennis testified that he did not intend to harm the petitioner and his comments were made in the heat of the moment, the circuit court is the final arbiter of witness credibility. See *Estate of Dejmal v. Merta*, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980). Further, the court properly considered the full context of the statements, and its findings were not clearly erroneous. See WIS. STAT. § 805.17(2). We affirm the circuit court’s determination that Dennis committed domestic abuse warranting injunctive relief.

¶8 Dennis insists the circuit court’s factual findings were insufficient because the restraining order was granted “almost solely off of one statement ... something to the effect that Dennis was going to beat up [the petitioner] if he interfered in his family again.” Dennis mischaracterizes the record. As mentioned, the circuit court found not only that Dennis made an overt threat about

beating the petitioner, but also that Dennis made an implicit threat to shoot him. In any event, Dennis's argument in this regard is undeveloped, conclusory, and fails to provide citation to any legal authority supporting the proposition that one "true threat" is insufficient to meet the elements of WIS. STAT. § 813.12. We shall therefore not further address the argument. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

